IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 12555 of 2004(T)

PETITIONER:

M/S.KINGSTON PLASTICS (P) LTD,
EDAYAR, BINANIPURAM REP. BY ITS MANAGING PARTNER
V.K.IBRAHIM S/O.V.K.KUTTY, AGED 68 YEARS,
RESIDING AT FLOWERMADE, VALIYANGADI, EDAYAR,
BINANIPURAM, ALUVA.

BY ADV. SRI.K.B.MOHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENTS:

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1. THE SALES TAX OFFICER,
SALES TAX OFFICE,
NORTH PARAVOOR.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SHRI.K.P.PRADEEP, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 12555/2004

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF PENALTY ORDER DATED 27/10/1998.

P2 : COPY OF 1ST REVISIONAL ORDER DATED 08/09/1999.

P3 : COPY OF THE DISMISSAL ORDER OF THE 2ND RESPONDENT DATED 15/11/2003.

P4 : COPY OF THE CERTIFICATE DATED 07/07/1995 ISSUED BY GENERAL MANAGER, DIC, ERNAKULAM.

P5 : COPY OF ELIGIBILITY CERTIFICATE DATED 29/11/1993.

P6 : COPY OF ASSESSMENT ORDER FOR 1994-95 DATED 27/10/1998.

P7 : COPY OF LETTER DATED 29/11/1997.

P8 : COPY OF LETTER DATED 13/09/1995.

P9 : COPY OF REVISION PETITION DATED 14/10/1999.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 12555 of 2004

Dated, this the 11th day of December, 2007

J U D G M E N T

Petitioner is challenging Ext.P3 order whereunder the Commissioner of Commercial Taxes has confirmed, in second revision, the penalty levied on petitioner under Section 45A of the KGST Act, modified by the Deputy Commissioner in first revision. It is seen that petitioner was enjoying sales tax exemption for a period up to 12/04/1994. Even after expiry of the period, petitioner continued to claim the benefit of sales tax exemption along with monthly returns on the ground that petitioner is likely to get further extension as a sick industrial unit. Admittedly, petitioner did not get certificate for further sales tax exemption as a sick industry. Therefore, there is no justification for the petitioner in not remitting the admitted tax along with monthly returns. The tax so evaded is above Rs.3,39,495/-. It is stated by the Assessing Officer that even after sending penalty notice, petitioner did not remit tax. Even before this Court petitioner has not furnished details of payment of tax and interest to consider for any modification on penalty. In the absence of mitigating circumstances and continued default in making payment of tax, there is no scope for interference with

penalty confirmed vide Ext.P3 order. This writ petition is devoid of any merit and, therefore, the same is dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg